

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In RE: Whittaker et al.

Serial No.: 10/692,442

Group No.: 3635

Filing Date: October 23, 2003

Examiner: Gilbert, William V.

For: **APPARATUS FOR ISOLATING AND LEVELING A MACHINE
FOUNDATION****FIRST CORRECTED APPEAL BRIEF**

MS Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is a corrected Appeal Brief submitted in response to the Notification of Non-Compliant Appeal Brief mailed on January 19, 2010. A Notice of Appeal was filed in this case on August 4, 2009 appealing the final rejection dated March 30, 2009. No fee is due because Applicant paid the fee required by 37 C.F.R. § 41.20(b)(2) with an earlier filed Brief. The Commissioner is hereby authorized to charge any additional fees that may be required for this appeal to Deposit Account No. 25-0115.

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REAL PARTY IN INTEREST

The real party in interest of the present appeal is Unisorb, Inc., the assignee, as evidenced by the assignment set forth at Reel 014664, Frame 0473.

RELATED APPEALS AND INTERFERENCES

There are no appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

STATUS OF CLAIMS

Claims 1-3, 7-9 and 17-24 stand finally rejected by the Examiner, as noted in the Office Action dated March 30, 2009. Claims 4-6 and 10-16 are withdrawn from consideration. The rejection of claims 1-3, 7-9 and 17-24 is appealed.

STATUS OF AMENDMENTS

No claim amendments were filed subsequent to the Examiner's final rejection dated March 30, 2009.

SUMMARY OF CLAIMED SUBJECT MATTER

The purpose of the invention is set forth in the section of the specification entitled *Summary of the Invention*:

The present invention provides an apparatus for isolating a machine foundation from a substructure of a building while also providing proper adjustments to level the machine foundation. The apparatus of the present invention provides an enclosure connected to the machine foundation wherein the enclosure has an upper portion and a lower portion that are telescopically adjustable to one another to allow for various sizes of the enclosure and provide a leveling adjustment of the machine foundation. (Page 3, lines 16-21).

The discussion of the claims will be informed by Figures 1 and 2 of the application, as reproduced below:

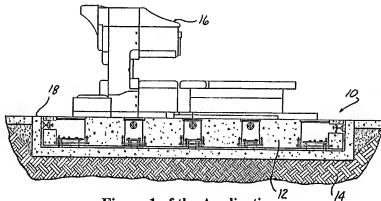


Figure 1 of the Application

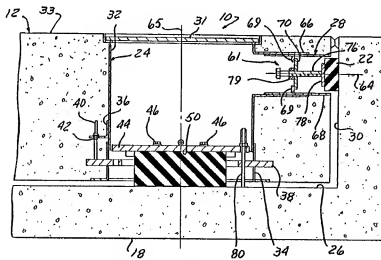


Figure 2 of the Application

Independent claim 1 is drawn to an apparatus 10 for isolating and leveling a machine foundation 12 with respect to a substructure 14 (FIG. 1; page 4, lines 14-16). The apparatus 10 includes a rigid enclosure 24 that is connectable to the machine foundation 12 (page 5, lines 16-18). The enclosure 24 has a substantially hollow upper portion 32 and a substantially hollow lower portion 34 (FIG. 2; page 6, lines 8-10). The upper portion 32 of the enclosure 24 is telescopically adjustably connected to the lower portion 34 of the enclosure 24 to provide for various sizes of the enclosure 24 (page 6, lines 10-12; page 7, lines 3-6). The apparatus 10 further includes means for rigidly connecting the upper portion 32 of the enclosure 24 to the lower portion 34 of the enclosure 24, for fixing the position of the upper portion 32 of the enclosure 24 with respect to the lower portion 34 of the enclosure 24. The means for rigidly connecting may include rods 40 that are integrally connected to an anchor ring 38 that is connected to the lower portion 34 of the enclosure, as well as flanges 36 that are connected to the upper portion 32 of the enclosure 24 and are adjustably connected to the rods 40 by slip joints 42 (page 6, line 12 - page 7, line 6). The apparatus 10 also includes means for providing a leveling adjustment of the machine foundation 12, such as a bearing member 44 that is adjustably connected to the anchor ring 38 of the lower portion 34 of the enclosure 24 by a plurality of fasteners 46 (page 7, lines 7-14).

Dependent claim 2 is dependent upon claim 1. Claim 2 is drawn to an apparatus 10 for isolating a machine foundation 12 with respect to a substructure 14, wherein the means for rigidly connecting includes an upper portion 32 of the enclosure 24 that has at least one flange 36 having an aperture extending therethrough, a lower portion 34 of the enclosure 24 having an anchor ring 38 with at least one rod 40 connected thereto and extending through the aperture in the flange 36 of the upper portion 32, and a slip joint 42 that is connected to the flange of the upper portion 32 for releasably connecting the rod 40 to the flange 36 (page 6, line 12 - page 7, line 6).

Dependent claim 3 is dependent upon independent claim 1. Claim 3 is drawn to an apparatus 10 for isolating and leveling a machine foundation 12 with respect to a substructure 14, wherein the means for providing a leveling adjustment comprises a lower portion 34 of the enclosure 24 having an anchor ring 38 that extends into the interior of the enclosure 24, a bearing member 44, and a support member 20. The bearing member 44 is disposed within the enclosure 24 and is adjustably connected to the anchor ring 38 to provide a leveling adjustment of the machine foundation (page 6, lines 17-20; page 7, lines 7-14). The support member 20 is in contact with the bearing member 44 and is engageable with the substructure 14 to isolate the machine foundation 12 from the substructure 14 (page 7, line 7 - page 8, line 6).

Dependent claim 8 is dependent upon dependent claim 3, which is in turn dependent on independent claim 1. Claim 8 is drawn to an apparatus 10 for isolating and leveling a machine foundation 12 with respect to a substructure 14, wherein the support member further comprises an inflatable airbag 110 that is provided for adjustably supporting the machine foundation 12 (pg. 12, lines 9-13).

Independent claim 9 is drawn to an apparatus 10 for isolating and leveling a machine foundation 12 with respect to a substructure 14 (FIG. 1; page 4, lines 14-16). The apparatus 10 includes a rigid enclosure 24 that is connectable to the machine foundation 12 (page 5, lines 16-18). The enclosure 24 has a substantially hollow upper portion 32 and a substantially hollow lower portion 34 that are telescopically connected to one another to provide for various sizes of the enclosure 24 (FIG. 2; page 6, lines 8-10). The lower portion 34 of the enclosure 24 has an anchor ring 38 that extends into the interior of the enclosure 24 (page 6, lines 17-20). A bearing member 44 is disposed within the enclosure 24 above the anchor ring 38 (FIG. 2, page 7, lines 7-8). A plurality of fasteners 46 connect the bearing member 44 to the anchor ring 38 in a vertically spaced relationship for vertical adjustment of the anchor ring 38 with respect to the bearing member 44 to provide a leveling adjustment of the machine foundation 12 (page 7, lines 7-14). A support member

20 is in contact with the bearing member 44 and engageable with the substructure 14 for isolating the machine foundation 12 from the substructure 14 (page 7, line 20 - page 8, line 6).

Dependent claim 18 is dependent upon independent claim 9. Claim 18 is drawn to an apparatus 10 for isolating and leveling a machine foundation 12 with respect to a substructure 14, where the support member further comprises an inflatable airbag 110 for adjustably supporting the machine foundation 12 (pg. 12, lines 9-13).

Dependent claim 21 is dependent upon claim 1. Claim 21 is drawn to an apparatus 10 for isolating and leveling a machine foundation 12 with respect to a substructure 14, wherein the upper portion 32 of the enclosure 24 is substantially tubular and has open ends, and the lower portion 34 of the enclosure 24 is substantially tubular and has open ends (FIG. 2; page 6, lines 8-12).

Dependent claim 22 is dependent upon claim 1. Claim 22 is drawn to an apparatus 10 for isolating and leveling a machine foundation 12 with respect to a substructure 14, wherein the upper portion 32 of the enclosure 24 is fabricated as an integral body, and the lower portion 34 of the enclosure 24 is fabricated as an integral body. (FIG. 2; page 6, lines 8-12).

Dependent claim 23 is dependent upon claim 1. Claim 23 is drawn to an apparatus 10 for isolating and leveling a machine foundation 12 with respect to a substructure 14, wherein the enclosure 24 is connectable to the machine foundation 12 to define a first open end of the rigid enclosure 24 at a top surface of the machine foundation 12 and a second open end of the rigid enclosure 24 at a bottom surface of the machine foundation 12 (FIG. 2; page 5, line 16 - page 6, line 12).

Dependent claim 24 is dependent upon claim 9. Claim 24 is drawn to an apparatus 10 for isolating and leveling a machine foundation 12 with respect to a substructure 14, wherein the anchor ring 38 has an inner perimeter and the fasteners 46 are arrayed around the anchor ring 38 adjacent to its inner perimeter (FIG. 2-8; page 7, lines 10-14; page 8, lines 2-6; page 13, line 5-16).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The issues presented for consideration in this appeal are as follows:

1. Whether apparatus claims 1-3, 7, 9, 17 and 21-24 are unpatentable under 35 U.S.C. §102(b) over United States Patent No. 4,074,474 to Cristy.
2. Whether apparatus claims 8 and 18-20 are unpatentable under 35 U.S.C. §103(a) over United States Patent no. 4,074,474 to Cristy.

ARGUMENT

A. APPARATUS CLAIMS 1-3, 7, 9, 17 and 21-24 ARE NOT ANTICIPATED BY CRISTY (U.S. PAT. NO. 4,074,474)

In the Office Action dated March 30, 2009, the Examiner rejects claims 1-3, 7, 9 17 and 21-24 under 35 U.S.C. §102(b) as anticipated by Cristy.

In pertinent part, and with reference to Figure 9 thereof (reproduced below), Cristy discloses the following:

Another embodiment of the invention wherein the pneumatic support means; includes a diaphragm and has a relatively low profile is illustrated in FIG. 9. In this arrangement, the enclosure of the pneumatic support means is toroidal shaped and is provided by a circular plate 230 and a circular diaphragm 232. Gas tight sealing is provided at a periphery of the diaphragm 232 where it is secured between the plate 230 and flanges 234 and 236 of frame members 238 and 240 respectively. A bore 241 is formed in the plate 230 and communicates between this enclosure and a channel 242 to which gas from a source is applied via a conduit, valving means and manifold as described hereinbefore. An intermediate support means 250 is provided and is positioned partly within the frame on the surface of the diaphragm 232. When the enclosure is pressurized as is illustrated in FIG. 9, the intermediate support means 250 is raised and the subfloor 14 is vertically displaced from the surface of upper flange segments 252 and 254 of the frame members 236 and 238 respectively. (Cristy, Col. 6, lines 37-56).

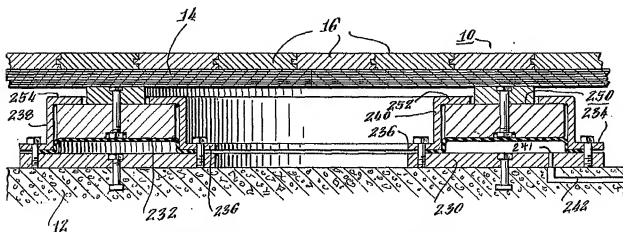


Figure 9 of Cristy, U.S. Patent No. 4,074,474

Claim 1

The rejection of independent claim 1 as anticipated by Cristy is improper. In particular, Cristy fails to teach all of the elements of claim 1.

Claim 1 recites “a rigid enclosure connectable to said machine foundation, and said enclosure having a substantially hollow upper portion telescopically adjustably connected to a substantially hollow lower portion to provide for various sizes of said enclosure”. The Examiner identified the intermediate support means 250 and the frame member 240 of Cristy as the upper portion of the enclosure. The Examiner identified the circular plate 230 and the circular diaphragm 232 as the lower portion of the enclosure.

The upper and lower enclosure portions identified by the Examiner are not “telescopically adjustably connected” to one another. The Examiner asserts that Cristy teaches a telescopic connection of the frame member 240 and the intermediate support means 250. However, both of these elements were identified by the Examiner as parts of the upper portion of the enclosure, and their relative movement does not constitute telescopic connection of the upper and lower portions identified by the Examiner.

The word “telescopic” can be defined as “having or consisting of concentric tubular sections designed to slide into one another” (Exhibit A, “Telescopic”, New Oxford American Dictionary, 2nd Ed., Oxford University Press, New York, 2005). With regard to the connection between the upper and lower portions identified by the Examiner, Cristy clearly shows that the frame member 250 of Cristy is bolted to the circular plate 230 in a facing, non-telescopic manner. Applicant submits that both of the elements identified as an upper portion of the enclosure, namely, the frame member 240 and the intermediate support means 250, would need to be telescopically adjustably connected to the circular plate 230 and the circular diaphragm 232 to properly meet

the claim language. Because the rejection ignores the arrangement of the claim elements, Cristy does not anticipate the enclosure of claim 1.

Claim 1 also recites “means for rigidly connecting said upper portion of said enclosure to said lower portion of said enclosure for fixing the position of said upper portion of said enclosure with respect to said lower portion of said enclosure” and “means for providing a leveling adjustment of said machine foundation.” These features of claim 1 are recited in the manner set forth in 35 U.S.C. §112, sixth paragraph, as a means for performing a specified function without the recital of structure, material, or acts in support thereof. Section 112 requires that such claims be construed to “cover the corresponding structure, material, or acts described in the specification and equivalents thereof.”

Applicant submits that these limitations have not been properly interpreted. While a means plus function limitation can be considered to be found in the prior art if the reference discloses the structure set forth in the application or a substantial equivalent, the Examiner has not applied the prior art to the structures disclosed in the application or explained how the cited art is equivalent to those structures. See In re Donaldson Co., 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994). Rather, the rejection clearly interprets the means-plus-function limitations of claim 1 as reading on any prior art means that performs the function specified in the claim without regard to whether the cited structure is equivalent to the structure disclosed in the specification. As set forth in MPEP §2183, the Examiner's rationale should be stated on the record. Because the rejection of claim 1 does not identify how the cited art discloses the corresponding structure in the specification or show that the cited structure is an equivalent, the rejection is improper.

With further regard to the “means for rigidly connecting” of claim 1, Applicants' specification states:

In order to adjust the depth or height of the enclosure 24 to correspond to the depth or height of the machine foundation 12, the

enclosure 24 has an upper portion 32 and a lower portion 34 that are telescopically received within one another. Specifically, the upper portion 32 of the enclosure 24 is telescopically received within the lower portion 34 of the enclosure 24. The upper portion 32 and the lower portion 34 of the enclosure 24 are adjustably connected through the use of three substantially right angle flanges 36 that are connected to and extend outward from the exterior of the upper portion 32 of the enclosure 24. The flanges 36 each have an aperture extending through the outwardly extending portion of the flange 36. The flanges 36 are equally spaced about the outer perimeter of the enclosure 24. The lower portion 34 of the enclosure 24 has an anchor ring 38 integrally connected to the lower portion 34 of the enclosure 24. The anchor ring 38 has an inner perimeter 39 and an outer perimeter 41 relative to the enclosure 24 that both extend at a substantially right angle from the lower portion 34 of the enclosure 24. Three rods 40 are integrally connected to the anchor ring 38 and extend upward toward the flanges 36 of the upper portion 32 of the enclosure 24. The three rods 40 correspond in location and number to the apertures in the flanges 36 of the enclosure 24. The rods 40 extend through the apertures provided in the flanges 36, and three adjustable slip joints 42, connected to each of the flanges 36, receive and engage the rods 40. The adjustable slip joints 42 provide a releasable locking mechanism that releasably locks the rods 40 within the adjustable slip joints 42 and allows the upper portion 32 and the lower portion 34 of the enclosure 24 to telescopically move relative to one another to provide for the desired height of the enclosure 24. (Page 6, line 8 – Page 7, line 6).

The Examiner identified an unlabeled bolt, which is shown as extending through a flange 236 of frame member 240 and through the circular plate 230 in FIG. 9 of Cristy as the “means for rigidly connecting” that is stated in claim 1. This structure does not constitute the structure in the specification corresponding to the “means for rigidly connecting” or an equivalent thereof. Furthermore, the cited structure does not fix the relative positions of the enclosure portions in connection with their telescopic adjustment, as described in the specification. In particular, Applicants’ specification makes clear that the enclosure portions 32, 34 can be locked in a fixed position to provide a particular size for the enclosure pursuant to the telescopic adjustment. Accordingly, Cristy does not anticipate the “means for rigidly connecting” of claim 1.

With regard to the “means for providing a leveling adjustment” of claim 1, Applicants’ specification states:

To apply the load of the machine 16 and the machine foundation 12 to the support member 20, the apparatus 10 of the present invention provides a load bearing member 44. The load bearing member 44 is a substantially flat, plate-like structure disposed within the enclosure 24. Four threaded fasteners 46 connect the bearing member 44 to the inner perimeter 39 of the anchor ring 38. The threaded fasteners 46 can be adjusted to adjust the distance between the bearing member 44 and the anchor ring 38, thereby adjusting the load applied to the support member 20 and the distance between the machine foundation 12 and a floor 26 of the substructure 14. However, the bearing member 44 can only be lowered to a point in which the upper portion 32 of the enclosure 24 bottoms out or engages the anchor ring 38. (Page 7, lines 7-16).

The Examiner identified the diaphragm 232 of Cristy as the “means for providing a leveling adjustment” that is stated in claim 1. Because the diaphragm 232 does not correspond to and is not the equivalent of the anchor ring 38, bearing member 44, and fasteners 46 disclosed by the Applicants, Cristy does not teach the “means for providing a leveling adjustment” of claim 1.

For at least the reasons stated above, Applicant respectfully requests that the Board reverse this rejection.

Claim 2

Dependent claim 2 is dependent on claim 1. The rejection of claim 2 is improper for the reasons stated with regard to claim 1, and because Cristy fails to teach the limitations cited in claim 2.

Claim 2 states that the means for rigidly connecting of claim 1 further comprises: “said upper portion of said enclosure having at least one flange having an aperture extending therethrough; said lower portion of said enclosure having an anchor ring with at least one rod connected thereto and extending through said aperture in said flange of said upper portion; and a slip joint connected to said

flange of said upper portion for releasably connecting said rod to said flange.” By further describing the means for rigidly connecting in this manner, this element is not subject to interpretation under 35 U.S.C. § 112, sixth paragraph, for purposes of claim 2.

The Examiner identified an unlabeled bolt, which is shown as extending through a flange 236 of frame member 240 and through the circular plate 230 in FIG. 9 of Cristy as the rod of claim 2. The Examiner identified the flange 236 of the frame member 240 as the flange of the upper portion of the enclosure. The Examiner identified the circular plate 230 as the anchor ring of claim 2.

Applicant notes that claim 2 recites structure for performing the function recited in connection with the “means for rigidly connecting” of claim 1, as evidenced by the preamble of claim 2. The bolt that connects the frame member 240 to the circular plate 230 in Fig. 9 of Cristy does not perform this function. In particular, the Examiner has identified the upper portion of the enclosure as including **both** the intermediate support means 250 and the frame member 240 as the upper portion of the enclosure. Cristy does not describe the bolt in Fig. 9 as being capable of fixing the position of the intermediate support means with respect to the circular plate 230 and the circular diaphragm 232 of Cristy. Rather, the intermediate support means 250 of Cristy is described as being vertically displaced in response to pressurization of the diaphragm 232.

Because the cited structure is not capable of fixing the position of the intermediate support means 250 and the frame member 240 with respect to the circular plate 230 and the circular diaphragm 232, the cited structure cannot be considered to meet the limitations of the claim. Here, the Examiner has asserted that two structures in combination read upon a single element of the claim. In such a situation, the combined structure, **as a whole**, must meet the limitations applied to the claim element in question. Otherwise, the cited combined structure is not arranged in the manner specified in the claim, and the claim cannot be considered to be anticipated.

For at least the reasons stated above, Applicant respectfully requests that the Board reverse this rejection.

Claims 3 and 7

Dependent claim 3 is dependent on claim 1. The rejection of claim 3 and its dependent claims 7 is improper for the reasons stated with regard to claim 1, and because Cristy fails to teach the limitations cited in claim 3.

Claim 3 states that the means for providing a leveling adjustment further comprises: "said lower portion of said enclosure having an anchor ring that extends into the interior of said enclosure; a bearing member disposed within said enclosure and adjustably connected to said anchor ring to provide a leveling adjustment of said machine foundation; and a support member in contact with said bearing member and engageable with said substructure for isolating said machine foundation from said substructure." By further describing the means for providing a leveling adjustment in this manner, this element is not subject to interpretation under 35 U.S.C. § 112, sixth paragraph, for purposes of claim 3 and its dependent claims.

The Examiner identified the circular plate 230 of Cristy as the anchor ring of claim 3. The plain meaning of "ring" contemplates a "band of any material", and is usually circular (Exhibit B, "Ring", New Oxford American Dictionary, 2nd Ed., Oxford University Press, New York, 2005). The anchor ring 38 substantially conforms to the plain meaning of "ring". In particular, Applicants' specification shows and describes a rectangular anchor ring 38 that is connected to the lower portion 34 of the enclosure 24 and has an inner perimeter 39 and an outer perimeter 41 that serve to define the anchor ring as a band of material (Figs. 2-3; Page 6, lines 17-20).

With the exception of apertures to accommodate bolts and a bore 241 that is in communication with a pressurized air source, the circular plate 230 of Cristy is continuous and solid within the confines of its outer periphery. The circular plate 230 of Cristy is not a "band of any material", and thus does not constitute a ring.

Claim 3 states that the bearing member is "adjustably connected" to the anchor ring.

Applicants' specification states:

To apply the load of the machine 16 and the machine foundation 12 to the support member 20, the apparatus 10 of the present invention provides a load bearing member 44. The load bearing member 44 is a substantially flat, plate-like structure disposed within the enclosure 24. Four threaded fasteners 46 **connect** the bearing member 44 to the inner perimeter 39 of the anchor ring 38. The threaded fasteners 46 can be adjusted **to adjust the distance** between the bearing member 44 and the anchor ring 38, thereby adjusting the load applied to the support member 20 and the distance between the machine foundation 12 and a floor 26 of the substructure 14. (Page 7, lines 7-14, emphasis added).

The Examiner identified the intermediate support means 250 of Cristy as the bearing member of claim 3 and identified the circular plate 230 as the anchor ring of claim 3. Cristy clearly teaches that the intermediate support means is positioned partly within the frame member 240 and is positioned on the surface of the diaphragm 232. Cristy does not anticipate an adjustable connection of the intermediate support means 250 and the circular plate 230. Thus, Cristy fails to anticipate the bearing member of claim 3.

Claim 3 states that the support member is "engageable with said substructure." The Examiner identified the diaphragm 232 of Cristy as the support member of claim 3. FIG. 9 of Cristy clearly shows that the diaphragm 232 is spaced from the substructure by the circular plate 230, which has been identified by the Examiner as a portion of the housing and as an anchor ring. Because the circular plate 230 of Cristy is not in the form of a ring, as explained above, the circular plate 230 prevents the support member from being engageable with the substructure. Thus, the apparatus shown in FIG. 9 of Cristy fails to teach the support member of claim 3.

For at least the reasons stated above, Applicant respectfully requests that the Board reverse this rejection.

Claim 9 and 17

The rejection of independent claim 9 and its dependent claim 17 as anticipated by Cristy is improper. In particular, Cristy fails to anticipate all of the elements of claim 9.

Claim 9 recites: "a rigid enclosure connectable to said machine foundation, and said enclosure having a substantially hollow upper portion and a substantially hollow lower portion telescopically connected to one another to provide for various sizes of said enclosure." The Examiner identified the intermediate support means 250 and the frame member 240 of Cristy as the upper portion of the enclosure. The Examiner identified the circular plate 230 and the circular diaphragm 232 as the lower portion of the enclosure.

As explained in connection with the enclosure of claim 1, the upper and lower enclosure portions identified by the Examiner are not "telescopically adjustably connected" to one another because of the direct facing relationship between the frame 240 and the circular plate 230. Because both the frame member 240 and the intermediate support means 250 would need to be telescopically adjustably connected to the circular plate 230 and the circular diaphragm 232 to meet the claim language, Cristy does not anticipate the enclosure of claim 9.

Claim 9 recites: "said lower portion of said enclosure having an anchor ring that extends into the interior of said enclosure." The Examiner identified the circular plate 230 of Cristy as the anchor ring of claim 9. As explained in connection with the recitation of the anchor ring in claim 3, the circular plate 230 of Cristy is not a ring, and thus, this element is not anticipated by Cristy.

Claim 9 recites "a bearing member disposed within said enclosure above said anchor ring" and "a plurality of fasteners that connect said bearing member to said anchor ring in a vertically spaced relationship for vertical adjustment of said anchor ring with respect to said bearing member to provide a leveling adjustment of said machine foundation."

The Examiner identified numerous disparate fasteners in Figure 9 of the Cristy reference as the plurality of fasteners of claim 9. (reference character W, Office Action dated March 30, 2009,

page 3). These fasteners are unlabelled bolts, including one bolt that connects two portions of the intermediate support means together, one bolt that connects the circular plate 230 to the foundation 12, and two bolts that connect the frame member 240 to the circular plate 230.

None of the cited fasteners is connected to both the intermediate support ring 250 and the circular plate 230. Accordingly, none of the cited fasteners connect these elements “in a vertically spaced relationship”, none of the cited fasteners is capable of performing the function of providing vertical adjustment, and none of the fasteners is capable to “provide a leveling adjustment of said machine foundation.”

Applicant notes that the Examiner asserts that the fasteners can be loosened or tightened for adjustment. This is not anticipated by Cristy. Applicant notes that loosening the fasteners that secure the frame member 240 to the circular plate 230 would depressurize the diaphragm 232, as this connection provides “gas tight sealing” (Cristy, Col. 6, lines 41-45). Loosening the other cited fasteners would not appear to have any effect, as the members otherwise secured by them would be compressed by the weight of the structure (Cristy, FIG. 9). Because this element is not taught by Cristy, and because the “adjustment” pointed to by the Examiner would be inoperable and / or ineffective, the Cristy reference does not anticipate the fasteners of claim 9.

Claim 9 recites: “a support member in contact with said bearing member and engageable with said substructure for isolating said machine foundation from said substructure.” The Examiner identified the diaphragm 232 of Cristy as the support member of claim 9. As explained in connection with the rejection of the support member in claim 3, the diaphragm 232 is spaced from the substructure by the circular plate 230, rendering the diaphragm 232 incapable of being engaged with the substructure. Thus, the apparatus shown in FIG. 9 of Cristy fails to anticipate the support member of claim 9.

For at least the reasons stated above, Applicant respectfully requests that the Board reverse this rejection.

Claim 21

Dependent claim 21 is dependent on claim 1. The rejection of claim 21 is improper for the reasons stated in regard to claim 1, and because Cristy fails to teach the limitations cited in claim 21.

Claim 21 further defines the rigid enclosure of claim 1, stating “said upper portion of said enclosure being substantially tubular and having open ends; and said lower portion of said enclosure being substantially tubular and having open ends.” The Examiner identified the intermediate support means 250 and the frame member 240 of Cristy as the upper portion of the enclosure. The Examiner identified the circular plate 230 and the circular diaphragm 232 as the lower portion of the enclosure.

Regarding the upper portion of the enclosure, while the frame member 240 might be substantially tubular, the intermediate support means 250 is not. Since both of these elements have been identified by the Examiner as comprising the upper portion of the enclosure, they must, in combination, constitute a structure that is tubular and has open ends. The intermediate support means 250 occupies the alleged open end and provides an end wall for the enclosure that renders the combined structure non-tubular.

Regarding the lower portion of the enclosure, the circular plate 230 and diaphragm 232 do not, in combination, provide a tubular, open-ended structure. The plain meaning of “tube” refers to any various structures or devices such as a hollow, elongated cylinder or a soft container whose contents can be removed by squeezing (Exhibit C, “Tube”, The Merriam Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/tube>, accessed on May 28, 2009; Exhibit D, “Tube,” Dictionary.com, <http://dictionary.reference.com/browse/tube>, accessed on May 28, 2009). Tubular is defined as “long, round, and hollow like a tube” (Exhibit E, “Tubular”, New Oxford American Dictionary, 2nd Ed., Oxford University Press, New York, 2005). Applicant notes that the specification indicates that “tube” includes rectangular structures but does not otherwise overrule the plain meaning of the term (FIG. 3). Because the structure identified as the lower portion of the

enclosure is, in combination, a diaphragm disposed on a plate, the structure is not tubular in shape and does not have open ends. Accordingly, this limitation is not anticipated by Cristy.

For at least the reasons stated above, Applicant respectfully requests that the Board reverse this rejection.

Claim 22

Dependent claim 22 is dependent on claim 1. The rejection of claim 22 is improper for the reasons stated with regard to claim 1, and because Cristy fails to teach the limitations cited in claim 22. Claim 22 further defines the rigid enclosure of claim 1 by stating "said upper portion of said enclosure fabricated as an integral body; and said lower portion of said enclosure fabricated as an integral body." The Examiner has indicated that the frame member 240 and the intermediate support means 250 of Cristy constitute an upper portion of the claimed enclosure. The Examiner reasons that "the pieces are integral in that they are attached to each other."

The frame member 240 and the intermediate support means 250 of Cristy are not an integral body. Applicant agrees with the Examiner that the broadest reasonable interpretation of integral could include structures that are attached to one another. However, Applicant notes that Cristy describes the intermediate support means 250 as vertically moveable within the frame member 240 in response to inflation and deflation of the diaphragm 232 (Cristy, Col. 6, lines 37-56). While disposition of the intermediate support means 250 within the frame member 240 is operable to restrict the range of motion of the intermediate support means 250 with respect to the frame member 240, this partial restriction of their relative motion does not render these otherwise unconnected members an integral body.

For at least the reasons stated above, Applicant respectfully requests that the Board reverse this rejection.

Claim 23

Dependent claim 23 is dependent on claim 1. The rejection of claim 23 is improper for the reasons stated in regard to claim 1, and because Cristy fails to teach the limitations cited in claim 23.

Claim 23 further defines the rigid enclosure of claim 1 by stating "said rigid enclosure connectable to said machine foundation to define a first open end of said rigid enclosure at a top surface of said machine foundation and a second open end of said rigid enclosure at a bottom surface of said machine foundation." The Examiner identified the intermediate support means 250 and the frame member 240 of Cristy as the upper portion of the enclosure. The Examiner identified the circular plate 230 and the circular diaphragm 232 as the lower portion of the enclosure.

The Examiner asserts that the structure shown in Cristy is capable of being connected to a machine foundation in the manner stated in claim 23. The Examiner identified the first open end as the opening in the frame member 240 through which the intermediate support member 250 extends. The Examiner identified the bore in the circular plate 230 through which an unlabelled bolt extends as the second open end.

The opening identified by the Examiner as the first open end of the enclosure of claim 1 is shown in Fig. 9 of Cristy as being blocked by the intermediate support member 250 of Cristy, which the Examiner contends is a portion of the enclosure. The cited structure cannot reasonably be considered an open end. Similarly, the aperture occupied by the bolt cannot be considered an open end. Rather, FIG. 9 of Cristy clearly shows an enclosure that is substantially closed-ended.

If the structure shown in Cristy were connected to a machine foundation in the manner required by the functional limitations stated in claim 23, it would be inoperable. In particular, if a machine foundation were located such that the frame 240 defined an opening through its top surface, the intermediate support member 250 of Cristy would not be engageable with it to level the machine foundation. If the bottom surface of the machine foundation were coincident with the bottom of the circular plate 230, the machine foundation would be in contact with the substructure, not isolated

from it. In short, the apparatus of Cristy is not connectable in the manner claimed, because doing so would render it completely superfluous and unable to function for its intended purpose. Accordingly, this functional limitation is not satisfied.

For at least the reasons stated above, Applicant respectfully requests that the Board reverse this rejection.

Claim 24

Dependent claim 24 is dependent on claim 9. The rejection of claim 24 is improper for the reasons stated in regard to claim 9, and because Cristy fails to teach the limitations cited in claim 9. Claim 24 further defines the anchor ring of claim 9 and recites the arrangement of the fasteners with respect to the anchor ring by stating: "said anchor ring having an inner perimeter; and said fasteners arrayed around said anchor ring adjacent to the inner perimeter thereof."

The Examiner identified an unlabeled bolt, which is shown as extending through a flange 236 of frame member 240 and through the circular plate 230 in FIG. 9 of Cristy as satisfying this limitation (reference character C, Office Action dated March 30, 2009, page 3). The Examiner identified a point on the circular plate 230 as its inner perimeter (reference character X, Office Action dated March 30, 2009, page 3).

Applicant first notes that the Examiner, in rejecting claim 9, identified fasteners from the Cristy reference in addition to those identified in the rejection of claim 24 as constituting the plurality of fasteners (reference character W, Office Action dated March 30, 2009, page 3). Some of the fasteners cited against claim 9 are not connected to the anchor ring and thus do not meet the limitation stated in claim 24. The fastener cited in the rejection of claim 24 does not meet the limitation stated in claim 9, namely, "a plurality of fasteners that connect said bearing member to said anchor ring in a vertically spaced relationship," because the cited fastener is not connected to the

intermediate support means. Since the cited art must meet both limitations for the rejection to be proper, the limitation is not met.

Next, Applicant notes that the cited fasteners are not arrayed around an inner perimeter of an anchor ring. The location noted by the Examiner is clearly the outer periphery of the circular plate 230. Accordingly, this limitation is not met (reference character X, Office Action dated March 30, 2009, page 3).

For at least the reasons stated above, Applicant respectfully requests that the Board reverse this rejection.

B. APPARATUS CLAIMS 8 AND 18-20 ARE NOT OBVIOUS OVER CRISTY (U.S. PATENT NO. 4,074,474)

In the Office Action dated March 30, 2009, the Examiner rejects claims 8 and 18-20 under 35 U.S.C. § 103(a) as obvious over the species shown in Figure 9 of Cristy in view of the species shown in Figure 6 of Cristy.

Claim 8

Dependent claim 8 is an apparatus claim that depends from claim 3, which in turn depends from independent claim 1. Claim 8 defines the support member of the apparatus as an inflatable airbag.

In rejecting this claim, the Examiner relied on the species shown in Figure 9 of Cristy as disclosing all of the elements of the invention, with the exception of use of an inflatable airbag. Regarding this element, the Examiner relied on the species shown in Figure 6 of Cristy, which teaches a containing portion 172.

The rejection of claim 8 relies on Cristy as teaching all of the elements of claims 1 and 3, from which claim 8 depends. The portions of Cristy that are relied on in this rejection are the same

portions that were relied on by the Examiner in rejecting claims 1 and 3 under 35 U.S.C. § 102(b) over Cristy. As explained in connection with that rejection, the species shown in Figure 9 of Cristy fails to teach all of the elements of claims 1 and 3. The rejection of claim 8 does not identify any portions of the species shown in Figure 6 of Cristy that would overcome the failure of the species shown in Figure 9 of the Cristy reference to teach the upper and lower enclosure portions of claim 1, the means for rigidly connecting of claim 1, the anchor ring of claim 3, the bearing member of claim 3, and the support member of claim 3. Accordingly, these elements are missing from the rejection of claim 8 for the reasons stated in regard to the rejection of claims 1 and 3 under 35 U.S.C. § 102 (b). Absent these elements, the invention of claim 8 cannot be obvious.

For at least the foregoing reasons, Applicant respectfully requests that the Board reverse this rejection.

Claims 18-20

Dependent claim 18 is an apparatus claim that depends from independent claim 9. Claim 18 defines the support member of the apparatus as an inflatable airbag.

In rejecting this claim, the Examiner relied on the species shown in Figure 9 of Cristy as disclosing all of the elements of the invention, with the exception of use of an inflatable airbag. Regarding this element, the Examiner relied on the species shown in Figure 6 of Cristy, which teaches a containing portion 172.

The rejection of claim 18 relies on Cristy as teaching all of the elements of claim 9, from which claim 18 depends. The portions of Cristy that are relied on in this rejection are the same portions that were relied on by the Examiner in rejecting claim 9 under 35 U.S.C. § 102(b) over Cristy. As explained in connection with that rejection, the species shown in Figure 9 of Cristy fails to teach all of the elements of claim 9. The rejection of claim 18 does not identify any portions of the species shown in Figure 6 of Cristy that would overcome the failure of the species shown in Figure 9

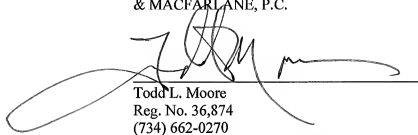
of the Cristy reference to teach enclosure of claim 9, the anchor ring of claim 9, the bearing member of claim 3, and the support member of claim 9. Accordingly, these elements are missing from the rejection of claim 18 for the reasons stated in regard to the rejection of claim 9 under 35 U.S.C. § 102 (b). Absent these elements, the invention of claim 18 cannot be obvious.

For at least the foregoing reasons, Applicant respectfully requests that the Board reverse this rejection.

CONCLUSION

In conclusion, Applicant respectfully submits that the rejection of claims 1-3, 7-9 and 17-24 is in error at least for the foregoing reasons, and therefore, should be reversed.

Respectfully Submitted,
YOUNG BASILE HANLON
& MACFARLANE, P.C.

A handwritten signature in black ink, appearing to read 'Todd L. Moore', is written over a horizontal line. The signature is stylized with a large loop at the beginning and a long horizontal stroke at the end.

Todd L. Moore
Reg. No. 36,874
(734) 662-0270
3001 West Big Beaver Road, Suite 624
Troy, Michigan 48084-3107

DATED: October 5, 2009

CLAIMS APPENDIX

Claims 4-6 and 10-16 are withdrawn from consideration.

1. An apparatus for isolating and leveling a machine foundation with respect to a substructure, comprising:

a rigid enclosure connectable to said machine foundation, and said enclosure having a substantially hollow upper portion telescopically adjustably connected to a substantially hollow lower portion to provide for various sizes of said enclosure;

means for rigidly connecting said upper portion of said enclosure to said lower portion of said enclosure for fixing the position of said upper portion of said enclosure with respect to said lower portion of said enclosure; and

means for providing a leveling adjustment of said machine foundation.

2. The apparatus stated in claim 1, wherein said means for rigidly connecting further comprises:

said upper portion of said enclosure having at least one flange having an aperture extending therethrough;

said lower portion of said enclosure having an anchor ring with at least one rod connected thereto and extending through said aperture in said flange of said upper portion; and

a slip joint connected to said flange of said upper portion for releasably connecting said rod to said flange.

3. The apparatus stated in claim 1, wherein said means for providing a leveling adjustment further comprises:

said lower portion of said enclosure having an anchor ring that extends into the interior of said enclosure;

a bearing member disposed within said enclosure and adjustably connected to said anchor ring to provide a leveling adjustment of said machine foundation; and

a support member in contact with said bearing member and engageable with said substructure for isolating said machine foundation from said substructure.

7. The apparatus stated in claim 3, further comprising:

said support member adaptable to be removably disposed between said bearing member and said substructure so that said support member may be replaced with other support members.

8. The apparatus stated in claim 3, said support member further comprising:

an inflatable air bag for adjustably supporting said machine foundation.

9. An apparatus for isolating and leveling a machine foundation with respect to a substructure, comprising:

a rigid enclosure connectable to said machine foundation, and said enclosure having a substantially hollow upper portion and a substantially hollow lower portion telescopically connected to one another to provide for various sizes of said enclosure;

said lower portion of said enclosure having an anchor ring that extends into the interior of said enclosure;

a bearing member disposed within said enclosure above said anchor ring;

a plurality of fasteners that connect said bearing member to said anchor ring in a vertically spaced relationship for vertical adjustment of said anchor ring with respect to said bearing member to provide a leveling adjustment of said machine foundation; and

a support member in contact with said bearing member and engageable with said substructure for isolating said machine foundation from said substructure.

17. The apparatus stated in claim 9, further comprising:

said support member adaptable to be removably disposed between said bearing member and said substructure so that said support member may be replaceable.

18. The apparatus stated in claim 9, said support member further comprising:

an inflatable air bag for adjustably supporting said machine foundation.

19. The apparatus stated in claim 18, further comprising:

a conduit coupled to and in communication with said air bag; and
said conduit communicable with a pressurized air source for communicating pressurized air to and from said air bag.

20. The apparatus stated in claim 19, further comprising:

said conduit extending through said substructure and into said enclosure wherein said conduit communicates with said air bag.

21. The apparatus stated in claim 1, further comprising:

said upper portion of said enclosure being substantially tubular and having open ends;
and
said lower portion of said enclosure being substantially tubular and having open ends.

22. The apparatus stated in claim 1, further comprising:

said upper portion of said enclosure fabricated as an integral body; and
said lower portion of said enclosure fabricated as an integral body.

23. The apparatus stated in claim 1, further comprising:

said rigid enclosure connectable to said machine foundation to define a first open end of said rigid enclosure at a top surface of said machine foundation and a second open end of said rigid enclosure at a bottom surface of said machine foundation.

24. The apparatus stated in claim 9, further comprising:

said anchor ring having an inner perimeter; and

said fasteners arrayed around said anchor ring adjacent to the inner perimeter thereof.

EVIDENCE APPENDIX

- Exhibit A “Telescopic”, New Oxford American Dictionary, 2nd Ed., Oxford University Press, New York, 2005, originally entered into the record by transmittal dated October 21, 2008.
- Exhibit B “Ring”, New Oxford American Dictionary, 2nd Ed., Oxford University Press, New York, 2005 originally entered into the record by transmittal dated October 21, 2008.
- Exhibit C “Tube”, The Merriam Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/tube>, accessed on May 28, 2009 originally entered into the record by transmittal dated June 1, 2009.
- Exhibit D Exhibit D, “Tube,” Dictionary.com, [http://dictionary.reference.com/ browse/tube](http://dictionary.reference.com/browse/tube), accessed on May 28, 2009 originally entered into the record by transmittal dated June 1, 2009.
- Exhibit E Exhibit E, “Tubular”, New Oxford American Dictionary, 2nd Ed., Oxford University Press, New York, 2005, originally entered into the record by transmittal dated October 21, 2008.

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boob tube

breathing tube

Main Entry: **tube** ☒

Pronunciation: \ˈtūb, ˈtyūb\

Function: *noun*Etymology: French, from Latin *tubus*; akin to Latin *tuba* trumpet

Date: 1651

1 : any of various usu. cylindrical structures or devices: as a : a hollow elongated cylinder; *especially* : one to convey fluids b : a soft tubular container whose contents (as toothpaste) can be removed by squeezing c (1) : **TUNNEL** (2) *British* : **SUBWAY** d d : the basically cylindrical section between the mouthpiece and bell that is the fundamental part of a wind instrument

2 a : a slender channel (as a fallopian tube or a pollen tube) within a plant or animal body : **DUCT** b : the narrow basal portion of a corolla with united petals or a calyx with united sepals

3 : **INNER TUBE**4 a : **ELECTRON TUBE**; *especially* : **VACUUM TUBE** b : **CATHODE-RAY TUBE**;*especially* : a television picture tube c : **TELEVISION**

5 : an article of clothing shaped like a tube <a tube top> <tube socks>

—tubed ☒ \ˈtūbd, ˈtyūbd\ *adjective*—tube-like ☒ \ˈtūb-,līk, ˈtyūb-,l\ *adjective*

—down the tube or down the tubes : into a state of collapse or deterioration

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Pronunciation Symbols

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"tube." Merriam-Webster Online Dictionary. 2009.
Merriam-Webster Online. 28 May 2009
<http://www.merriam-webster.com/dictionary/tube>

APA Style

tube. (2009). In Merriam-Webster Online Dictionary.
Retrieved May 28, 2009, from <http://www.merriam-webster.com/dictionary/tube>

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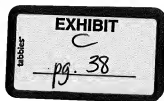
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tube [tooh, tyooh] **Show IPA** *noun, verb, tubed, tub-ing.*

-noun

- a hollow, usually cylindrical body of metal, glass, rubber, or other material, used esp. for conveying or containing liquids or gases.
- a small, collapsible, cylinder of metal or plastic sealed at one end and having a capped opening at the other from which paint, toothpaste, or some other semifluid substance may be squeezed.
- Anatomy, Zoology.** any hollow, cylindrical vessel or organ: the *bronchial tubes*.
- Botany.**
 - any hollow, elongated body or part.
 - the united lower portion of a gamopetalous corolla or a gamosepalous calyx.
- INNER TUBE.**
- Electronics.** ELECTRON TUBE.
- Informal.**
 - TELEVISION.
 - a television set.
- MAILING TUBE.**
- the tubular tunnel in which an underground railroad runs.
- the railroad itself.
- Surfing Slang.** the curled hollow formed on the underside of a cresting wave.
- British.** *sunray* (def. 1).
- Australian Slang.** a can of beer.
- Older Slang.** a telescope.

-verb (used with object)

- to furnish with a tube or tubes.
- to convey or enclose in a tube.
- to form into the shape of a tube; make tubular.

-Idiom

- down the tube or tubes, *Informal*. into a ruined, wasted, or abandoned state or condition.

Origin

1590-1600; < L *tubus* pipe

Related forms:

tubeless, adjective
tube-like, adjective

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-noun

a doughnut-shaped, flexible rubber tube inflated inside a tire to bear

Also called *tube*.

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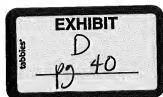


Origin:
1890-95

sub-way   [suhb-vey]  Show IPA

-noun

1. Also called, especially British, tube, underground, an underground electric railroad, usually in a large city.



3. to be transported by a subway: We *subwayed* uptown.

1820-30; SUB- + WAY ¹

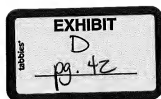
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Tube

Tube, *n.* (Elec. Railways) A tunnel for a tube railway; also (Colloq.), a tube railway. [Chiefly Eng.]

Tube

Tube, *n.* [L. *tubus*; akin to tube a trumpet; cf F. *tube*.]

1. A hollow cylinder, of any material, used for the conveyance of fluids, and for various other purposes; a pipe.
2. A telescope. "Glazed optic tube." —Milton.
3. A vessel in animal bodies or plants, which conveys a fluid or other substance.
4. (Bot.) The narrow, hollow part of a gamopetalous corolla.
5. (Gun.) A priming tube, or friction primer. See under *Priming*, and *Friction*.
6. (Steam Boilers) A small pipe forming part of the boiler, containing water and surrounded by flame or hot gases, or else surrounded by water and forming a flue for the gases to pass through.
7. (Zool.) (a) A more or less cylindrical, and often spiral, case secreted or constructed by many annelids, crustaceans, insects, and other animals, for protection or concealment. See *Illustr.* of *Tubificum*. (b) One of the siphons of a bivalve mollusk.

Capillary tube, a tube of very fine bore. See *Capillary*.

Fire tube (Steam Boilers), a tube which forms a flue.

Tube coral. (Zool.) Same as *Tubipore*.

Tube foot (Zool.), one of the ambulacral suckers of an echinoderm.

Tube plate, or **Tube sheet** (Steam Boilers), a flue plate. See under *Flue*.

Tube pouch (Mil.), a pouch containing priming tubes.

Tube spinner (Zool.), any one of various species of spiders that construct tubelike webs. They belong to *Tegenaria*, *Agelena*, and allied genera.

Water tube (Steam Boilers), a tube containing water and surrounded by flame or hot gases.

Tube

Tube, *v. t.* [Imp. & p. p. *Tubed*; p. pr. & vb. n. *Tubing*.] To furnish with a tube; as, to tube a well.

Language Translation for : tube

Spanish: tubo, tubería, German: das Rohr,
Japanese: 管

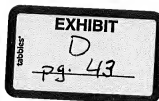
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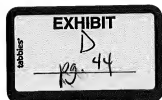
1. *n.* A CRT terminal. Never used in the mainstream sense of TV; real hackers don't watch TV, except for Looney Toons, Rocky & Bullwinkle, Trek Classic, the Simpsons, and the occasional cheesy old swashbuckler movie.
2. [IBM] To send a copy of something to someone else's terminal.
"Tube me that note?"

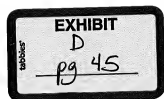
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1611, from M.Fr. *tube* (1460), from L. *tubus* "tube, pipe," of unknown origin (H.D. Browne, in the "Londoner" of June 30, 1900); *tube* for * from 1959, short for cathode ray tube or picture tube. *Tube* top as a form of a tube or pipe, but the modern slang sense is from 1962, is attested from 1963 as "Frankfurter," slang meaning "penis" is recorded.



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Main Entry: ¹tube

Pronunciation: 't(y)ʊb

Function: noun

1: a slender channel within a plant or animal body: DUCT —see

BRONCHIAL TUBE, EUSTACHIAN TUBE, FALLOPIAN TUBE

2a: an often complex piece of laboratory or technical apparatus usually of glass and commonly serving to isolate or convey a product of reaction tube> b: TEST TUBE

3: a collapsible cylindrical container (as of metal or plastic) from which a paste is dispensed by squeezing tube>

4: a hollow cylindrical device (as a cannula) used for insertion into bodily passages or hollow organs for removal or injection of materials

Main Entry: ²tube

Function: transitive verb

Inflected Forms: tubed; tub-ing

t to furnish with, enclose in, or pass through a tubetubed —

Anesthesia Digest>

tube (tloo-macr; b, ty-boomacr; b)

n.

1. A hollow cylinder, especially one that conveys a fluid or functions as a passage.
2. An anatomical structure or organ having the shape or function of a tube; a duct.

tube

1. A CRT terminal. Never used in the mainstream sense of TV; real hackers don't watch TV, except for Loony Toons, Rocky & Bullwinkle, Trek Classic, the Simpsons, and the occasional cheesy old swashbuckler movie.

2. electron tube.

3. (IBM) To send a copy of something to someone else's terminal.

"Tube me that note."

[The Jargon File]

(1996-02-05)

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see down the tubes.

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